

## **5.0 SUBAREA PLAN IMPLEMENTATION AND PRESERVE ASSEMBLY**

The *Chula Vista Subarea*, the area for which Take Authorization will be granted, consists of the territory located within the City's jurisdictional boundaries, and as such may be adjusted for annexations from time to time. Subarea Plan Take Authorization will be issued for impacts associated with development that will take place within the City's incorporated boundaries. Take Authorization for areas annexed into the City from the *Chula Vista MSCP Planning Area* will transfer to the Subarea (City) through future MSCP Annexation Agreement(s) and will exist independently under the *Chula Vista Subarea Plan* (refer to Section 5.3.1 of this Subarea Plan).

The City will enter into an Implementing Agreement (IA) with the Wildlife Agencies for this Subarea Plan. The IA will be the contract between the City and the Wildlife Agencies regarding their individual and collective roles in implementing the City of Chula Vista MSCP Subarea Plan. The IA will ensure that the Chula Vista MSCP Subarea Plan will be implemented over the next fifty years and that Federal and State Take Authorizations will be in effect for the same time period, subject to the terms of the IA.

### **5.1 Preserve Assembly**

The Preserve will be assembled primarily through the development entitlement process. Acquisition of conservation lands with public funds will not be necessary or required in order to assemble the Preserve. Although not required, a small portion of the Preserve (up to 160 acres) has been identified for possible acquisition by the City. Land designated for potential acquisition is located in the Otay River Valley, west of Heritage Road, and in the planned Preserve. It includes smaller parcels, which are targeted for 75-100% preservation (Figure 1-2). Acquisition may be pursued if entitlements are not sought for these properties or may be pursued in order to reach conservation levels above the required 75%.

The total land estimated to be conserved through implementation of this Subarea Plan is shown on Table 3-5. As the Subarea Plan is implemented, conservation will occur both within and outside the City. Land conserved within the City will be conveyed into the Preserve. All land being conveyed will be accompanied by a conservation easement or other mechanism approved by the Wildlife Agencies as being sufficient to insure that lands are protected in perpetuity. Conservation outside the City will occur within the County of San Diego Subarea Plan MSCP (South County Segment) and will be conserved in accordance with the conservation mechanisms identified in the County Subarea Plan.

For development projects requiring subdivision approval, land will be offered for conveyance or dedication to the Preserve concurrent with City approval of a final map or parcel map. For development projects requiring a rezoning, SPA Plan or Precise Plan approval, the project proponent may choose to offer land for dedication simultaneously with City approval of a tentative map in order to obtain earlier third-party beneficiary status. For development projects requiring only issuance of a grading permit, land must be offered for conveyance or dedication to the Preserve prior to issuance of a grading permit.

Take will be extended to Covered Projects as part of the land development approval process. Covered Projects will dedicate conservation land as development occurs pursuant to individual project approvals and simultaneously with issuance of final map as required by tentative map conditions or with issuance of a grading permit, whichever is applicable. When Take is extended, projects will be conditioned to maintain habitat values in conservation areas until such conservation areas are dedicated and accepted into the Preserve. If not specifically set forth in Covered Project approvals, a conveyance ratio will be applied to ensure that open space dedication is proportionate to development. The conveyance ratio will be calculated as follows:

- Determine total acres to be developed;
- Determine total acres required for habitat conservation;
- Calculate relative percentage of habitat conservation acres to development; and
- Define a conveyance ratio that maintains the relative percentage of habitat conservation to development.

When Take is authorized through HLIT Permits, projects will mitigate impacts in accordance with the HLIT Ordinance, thus adding to the estimated conservation levels identified in Table 3-5 of this Subarea Plan. To ensure complete assembly of the Preserve as planned by this Subarea Plan, the City will encourage all mitigation to be conducted within the Preserve and will discourage purchase of land for mitigation outside the Preserve. Use of conservation banks approved by the Wildlife Agencies within the *Chula Vista MSCP Planning Area* boundaries is considered an acceptable mitigation method as well as direct purchase of land within the Preserve.

#### **5.1.1 100% Conservation Areas / Covered Projects**

The majority of the Preserve consists of hard-line areas designated for 100% conservation. These 100% Conservation Areas are either already in public ownership or will be dedicated into Preserve as part of the development approval process for Covered Projects. Preserve boundaries for Covered Projects have been established on a project-by-project basis after evaluation of habitat and species data collected and/or surveys conducted as part of project entitlement processing, evaluation by the Wildlife Agencies, and consideration of how such mitigation could best contribute to the overall MSCP subregional planning effort.

The Covered Projects (Figure 5-1) have identified preservation areas that comprise major segments of the Preserve, consistent with the goals and objectives of the MSCP Subregional Plan. The Preserve areas for these projects have been incorporated into adopted project plans and entitlements and have been made conditions of individual project approvals. Specific project conditions for coverage are enumerated in the City Planning Component Framework Management Plan, Section 7.5.6 and the Otay Ranch Planning Component Framework Management Plan (RMP1 and RMP2) discussed in Section 7.6.

Covered Projects contain areas delineated for development and 100% conservation. The Development Areas of Covered Projects will not be subject to the HLIT Ordinance or any other additional mitigation or habitat preservation requirements beyond those incorporated into individual project approvals and Section 7.0 of this Subarea Plan. Any uses in the 100% Conservation Areas of Covered Projects will be consistent with Section 6.0 of this Subarea Plan and pursuant to the HLIT Ordinance. Table 5-1 identifies the Chula Vista Covered Projects.

**Table 5-1: Covered Projects**

<b>Covered Project</b>	<b>Conditions for Coverage</b>
Rolling Hills Ranch (Salt Creek Ranch)	Section 7.5.6.3
San Miguel Ranch	Section 7.5.6.4
Bella Lago	Section 7.5.6.5
Otay Ranch	Section 7.6 and Otay Ranch RMP
University Project	Section 7.6.2 and Otay Ranch RMP

Take Authorization for San Miguel Ranch has been issued and Coverage for San Miguel Ranch is based on the provisions of the Annexation Agreement Concerning the Conservation and Biological Mitigation Program for the Implementation of San Miguel Ranch Sectional Planning Area Plan and Tentative Tract Map, discussed in Sections 3.1.4 and 7.5.6.4 of this Subarea Plan. Coverage for all other Covered Projects is based on the assured dedication (through a conservation easement and/or fee title) of the open space related to each Covered Project, implementation of the project-specific mitigation programs detailed in this Subarea Plan as referenced above, and implementation of the area specific management directives found in Table 3-5 of the MSCP Subregional Plan (Appendix A) and as discussed in Section 7.0 of this Subarea Plan. If, at the time of development project approval, it is determined that the conditions of coverage and terms of the Subarea Plan have been met (including anticipated habitat values), Take will be extended to Covered Projects. Also at that time, maintenance of habitat values of the conserved lands will be assured.

### **5.1.2 75-100% Conservation Areas**

Approximately 133 acres within the Subarea are designated as 75-100% areas (97 acres in the Otay River Valley and 36 acres in the Sweetwater River Valley). The 75-100% Conservation Areas (Figure 1-2) consist primarily of smaller private landholdings located within the planned Preserve. Habitats in these areas will be subject to the HLIT Ordinance, which will restrict development impacts to no more than 25% of the mapped Conservation Area, thus assuring a minimum conservation level of 75% of these Preserve lands. In some cases, property within the 75-100% Conservation Area may be acquired, in part or in whole, increasing conservation levels above the 75% target.

### **5.1.3 Subarea Plan Amendment Areas**

Location of the Preserve and development areas was not resolved for all of the land in this Subarea Plan. Lands designated within the Subarea as Minor or Major Amendment Areas are shown on Figure 1-2. Take Authorization for Minor Amendment Areas may be extended only after a Subarea Plan Amendment has been completed pursuant to Section 5.1.3.1. Take Authorization for Major Amendment Areas will require an amendment to this Subarea Plan pursuant to Section 5.1.3.2, and issuance of a separate Take Authorization from the Wildlife Agencies. Minor and/or Major Amendments to the Subarea Plan will be initiated at the request of the property owner to the City, and approved by the Wildlife Agencies.

#### ***5.1.3.1 Minor Amendments to the Subarea***

A small number of properties totaling approximately 137 acres within the *Chula Vista Subarea* are designated as “Minor Amendment Areas.” These areas will require the processing of a Minor Amendment to this Subarea Plan before Take Authorization will apply to any portion of these properties.

Minor Amendment areas contain habitat that could be partially or completely eliminated (with appropriate mitigation) without affecting the overall goals of the Subarea Plan. Minor amendments require the written approval of the USFWS’s Field Supervisor and the CDFG’s NCCP Program Manager. The process for completing minor Subarea Plan amendments includes the following:

1. The project proponent must meet with the City to discuss proposed development project.
2. The project proponent must prepare and submit updated biological surveys (CEQA-level).
3. The project proponent may complete mitigation in one of three ways: by establishing Preserve boundaries within the project area, by establishing off-site mitigation, or by some combination thereof.
  - a. If the project proponent proposes to establish Preserve boundaries within the project area, such Preserve boundaries must be designed pursuant to the Preserve design criteria in Section 3.6 of the MSCP Subregional Plan.
  - b. Mitigation must meet the requirements of the HLIT Ordinance.
  - c. An agreement must be reached between the City and the Wildlife Agencies for establishment of new Preserve boundaries within the project area, for establishment of off-site mitigation, or some combination thereof.

4. Project proponent must incorporate biological information for the Preserve boundaries or mitigation agreed-upon by the applicant, City, and Wildlife Agencies into projects environmental documentation.
5. The City will consider adoption of a Minor Subarea Plan Amendment during consideration of a project's SPA Plan or equivalent entitlement process for projects not requiring SPA Plan approval.

Area-specific management directives, as described in Section 7.3 of this Subarea Plan, will be required for Minor Amendment Areas and must incorporate the conditions for species coverage found in Table 3-5 of the MSCP Subregional Plan.

#### ***5.1.3.2 Major Amendments to the Subarea***

Major Amendment Areas designated by this Subarea Plan are consistent with the Preserve designations found in the South County Segment Plan adopted as part of the County's Subarea Plan and MSCP Subregional Plan Final EIR/EIS. The total area designated as Major Amendment within the *Chula Vista Subarea* is approximately 7 acres. Pursuant to requirement by the Wildlife Agencies, "all lands shown as major amendment areas in the County Subarea Plan will require a formal amendment to the permit to receive Take Authorizations.... Requests for major amendments must be processed by the Wildlife Agencies in conformity with all applicable laws and regulations including the (NEPA), California Environmental Quality Act (CEQA), and the ESA."<sup>1</sup> These designated areas will therefore require processing of a Major Amendment before Take Authorization can be granted.

Requests by landowners for a Major Amendment will be submitted to the City. The City will coordinate processing the Major Amendment with the Wildlife Agencies. The process for completion of Major Amendments to the Subarea Plan include:

1. Project proponent must meet with the City and the Wildlife Agencies to discuss the proposed development project and required biological surveys.
2. Project proponent must submit updated biological surveys per City's MSCP Implementation Guidelines.
3. Project proponent must define Preserve boundaries consistent with the requirements of the HLIT Ordinance (including narrow endemic policies), Preserve design criteria in Section 3.6 of the MSCP Subregional Plan, and the conditions for species coverage under Table 3-5 of the MSCP Subregional Plan (Appendix A).

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<sup>1</sup> Letter to City of Chula Vista from Ken Berg, USFWS and CF Raysbrook, CDFG: August 1999.

4. Project proponent must receive agreement from the City and the Wildlife Agencies for establishment of new Preserve boundaries.
5. Project proponent must incorporate biological information and Preserve boundaries agreed-upon by the City and Wildlife Agencies into project environmental documentation.
6. Project proponent must prepare Major Subarea Plan Amendment meeting the Habitat Conservation Plan standards of the ESA and required Federal and State environmental documents.
7. The City will consider adoption of a Major Subarea Plan Amendment during consideration of a project's SPA Plan or equivalent entitlement process for projects not requiring SPA Plan approval.
8. USFWS will process Major Subarea Plan Amendment and an amendment to the incidental Take permit in accordance with all statutory and regulatory requirements.

## **5.2 Subarea Plan Implementation Tools**

The Chula Vista MSCP Subarea Plan will be incorporated as an element of the City's General Plan. The General Plan Amendment will be adopted concurrent with Subarea Plan approval by the City, prior to issuance of Take Authorization by the Wildlife Agencies. Certain land within the City will be assigned appropriate MSCP overlay designations. The City will implement the General Plan land use overlay designations for MSCP by creating overlay zones. Table 5-2 depicts the relationship between the Chula Vista MSCP Subarea Plan land use categories, General Plan land use overlay designations and overlay zones. The provisions of this Subarea Plan and IA supercede those of the Chula Vista General Plan in the event of conflicts. Future amendments to individual SPA/Precise Plans may be required to provide consistency between the Subarea Plan, General Plan and other existing planning documents. It is anticipated that these amendments would be processed concurrently with the overall planning documents for individual areas.

**Table 5-2: Relationship between Chula Vista MSCP Subarea Plan and General Plan**

<b>MSCP Subarea Plan</b>	<b>General Plan Overlay Designation</b>	<b>Overlay Zone</b>
100% Conservation Area	MSCP Open Space	MSCP Open Space Zone
75-100% Conservation Area	MSCP Take Authorized 1	MSCP Take Authorized Zone 1
Development Areas outside of Covered Projects	MSCP Take Authorized 2	MSCP Take Authorized Zone 2
Development Areas within Covered Projects	N/A	N/A

Development of land within MSCP overlay zones will be required to meet development standards consistent with the Chula Vista MSCP Subarea Plan. To achieve project consistency with the MSCP Subregional Plan and Chula Vista MSCP Subarea Plan and to implement the MSCP overlay zones, the City will create and utilize several implementation tools described in Section 5.2.1 through 5.2.6 of this Subarea Plan.

### **5.2.1 Amendment to Chula Vista Excavation, Grading and Fills Ordinance**

Subsequent to conditional adoption of the Chula Vista Subarea Plan by the City Council in October 2000, the City immediately initiated preparation of amendments to the City of Chula Vista Excavation, Grading and Fills Ordinance (hereafter referred to as “Grading Ordinance”). The City’s Grading Ordinance applies to all land within the City’s incorporated limits and will be amended to include the following:

1. Regulations on clearing and grubbing of Sensitive Biological Resources to ensure compliance with the Chula Vista MSCP Subarea Plan.
2. Prohibition against issuance of a grading permit for areas within a project that will result in impacts to wetland habitats or species, or to Listed Non-covered Species, prior to issuance of applicable Federal and/or State permits (refer to Section 5.2.4 of this Subarea Plan).
3. Take Authorization exemption for clearing and grubbing activities located in a Development Area outside of a Covered Project in a Project Area that is one acre or less in size, not part of a larger contiguous clearing and grubbing project, and will not impact Wetlands or Listed Non-covered Species.

Amending the Excavating, Grading and Filling Ordinance will ensure that all projects, both within and outside of Covered Project areas, will comply with the requirements of this Subarea Plan. Such amendments will be adopted by the City prior to issuance of Take Authorization by the Wildlife Agencies to the City pursuant to this Subarea Plan.

### **5.2.2 Habitat Loss and Incidental Take Ordinance**

Subsequent to conditional adoption of the Chula Vista Subarea Plan by the City Council in October 2000, the City initiated preparation and processing of a new City ordinance to establish a Habitat Loss and Incidental Take (HLIT) Permit. The HLIT Ordinance will be consistent with the conservation and mitigation goals of the MSCP Subregional Plan and this Subarea Plan, and will establish development standards for the MSCP overlay zones. The HLIT Ordinance will be completed and adopted prior to issuance of Take Authorization by the Wildlife Agencies to the City pursuant to this Subarea Plan. Subsequent to adoption of the HLIT Ordinance, Implementation Guidelines will be created by the City to assist applicants in meeting HLIT regulations.

Unless exempt, HLIT Ordinance compliance will be required for all development within the City’s jurisdiction which is not located within the Development Areas of Covered Projects prior to issuance of any land development permit. Provisions for protection of

Narrow Endemic Species (pursuant to Section 5.2.3) will apply to all areas regulated by the HLIT Ordinance. Impacts to Wetlands will be avoided and minimized to the maximum extent practicable as further described in Section 5.2.4 of this Subarea Plan.

HLIT regulations and facilities siting criteria will be applied to all Planned and Future Facilities within the 100% Conservation Area. HLIT regulations and development design standards will also be applied to all development projects proposed within the 75-100% conservation areas. For property located within the 75-100% Conservation Area, the HLIT will limit development within the mapped 75-100% Conservation Area to 25% of the area so mapped, and will direct such development to the least environmentally sensitive portion of the site.

For projects within Development Areas outside of Covered Projects that contain sensitive biological resources, and the Project Area is greater than one acre, the HLIT Ordinance will require biological evaluation of all resources onsite. The HLIT will not limit encroachment into Tier I, II, and III habitats as defined in Table 5-3 of this Subarea Plan except where necessary to address potential impacts to Narrow Endemic Species and/or Wetlands.

Should focused surveys for certain sensitive species be required, they must be conducted by a qualified biologist and must follow the most recent survey protocol adopted by the Wildlife Agencies. In cases where no adopted protocol exists, general focused survey guidelines, developed in consultation with the Wildlife Agencies, will be incorporated in the MSCP Implementation Guidelines and must be followed.

Impacts to Tier I, II, and III habitats will be mitigated pursuant to HLIT mitigation standards contained in Table 5-3 of this Subarea Plan. For Wetland impact mitigation ratios refer to Section 5.2.4. To ensure complete assembly of the Preserve as planned by this Subarea Plan, the City will encourage all mitigation to be conducted within the Preserve and will discourage purchase of land outside the Preserve for mitigation.



**Table 5-3: HLIT Upland Habitat Mitigation Ratios**

<b>Tier</b>	<b>Habitat Type</b>	<b>Location of Impact</b>	<b>Location of Preservation</b>	
			<b>Inside Preserve</b>	<b>Outside Preserve</b>
<b>TIER I:</b> (rare uplands)	Southern Foredunes Coastal Bluff Scrub Maritime Succulent Scrub Native Grasslands Oak Woodlands	Inside Preserve	2:1	3:1
		Outside Preserve	1:1	2:1
<b>TIER II:</b> (uncommon uplands)	Coastal Sage Scrub CSS/Chaparral	Inside Preserve	1.5:1	2:1
		Outside Preserve	1:1	1.5:1
<b>TIER III:</b> (common uplands)	Mixed Chaparral Chamise Chaparral Non-native Grassland Scrub Oak/Chaparral	Inside Preserve	1:1	1.5:1
		Outside Preserve	0.5:1	1:1
<b>TIER IV:</b> (other uplands)	Disturbed Lands Agricultural Lands Eucalyptus	Inside Preserve	No Mitigation Required	No Mitigation Required
		Outside Preserve		
<b>Covered Narrow Endemic Species</b>	Listed on Table 5-4	N/A	1:1 to 3:1	1:1 to 3:1

**5.2.2.1 HLIT Exclusions**

Take of Covered Species and habitat within Development Areas of Covered Projects will not require a HLIT Permit. Covered Projects will be developed consistent with requirements of approved SPA or Precise Plans, Wildlife Agency Agreements, conditions of coverage cited in Section 7.5.6 of this Subarea Plan, and/or the Otay Ranch GDP/SRP and RMP. Development of Covered Projects within Preserve boundaries will be subject only to the Narrow Endemic Species protection provisions of the HLIT, as described in Section 5.2.3 of this Subarea Plan and Wetlands protection described in Section 5.2.4.

### **5.2.3 Avoidance and Minimization of Impacts to Narrow Endemic Species**

Southwestern San Diego County includes specific geographic and climatological conditions that support species with limited habitat ranges. These species, referred to as “Narrow Endemic Species”, are highly restricted by their habitat affinities, soil conditions and/or other ecological factors, and require additional measures to ensure that their long-term viability is maintained.

Impacts to Narrow Endemic Species will be mitigated in kind at ratios of 1:1 to 3:1, depending on the sensitivity of the species. Other strategies to achieve coverage for these species include avoidance and minimization of impacts; management directives from Table 3-5 of the MSCP Subregional Plan (Appendix A); enhancement of existing habitats and populations; and transplantation where appropriate, as implemented through project-specific mitigation for Covered Projects.

When focused surveys for Narrow Endemic Species are required, they must be conducted by a qualified biologist and must follow the most recent survey protocol adopted by the Wildlife Agencies. In cases where no adopted protocol exists, general focused survey guidelines will be developed, in consultation with the Wildlife Agencies, as part of the MSCP Implementation Guidelines.

Table 5-4 identifies those Narrow Endemic Species requiring additional conservation measures outlined in this section of the Subarea Plan to assure long-term survival. Additional management information for these species is contained in Table 3-5 of the MSCP Subregional Plan (Appendix A) and in Section 4.0 of this Subarea Plan.

**Table 5-4: Narrow Endemic Species for Chula Vista Subarea\***

Common Name	Scientific Name	Table 3-5 of the MSCP Subregional Plan Page Reference
<b>Species that occur in <i>Chula Vista Subarea</i> and for which Subarea Plan provides a significant contribution to subregional conservation</b>		
Salt marsh bird's-beak	<i>Cordylanthus maritimus</i> ssp. <i>maritimus</i>	3-41
Variegated dudleya	<i>Dudleya variegata</i>	3-44
Otay tarplant	<i>Deinandra [Hemizonia] conjugens</i>	3-48
Snake cholla	<i>Opuntia parryi</i> var. <i>serpentina</i>	3-54
<b>Species with known occurrences or suitable habitat within the <i>Chula Vista Subarea</i></b>		
San Diego thorn-mint	<i>Acanthomintha ilicifolia</i>	3-32
San Diego ambrosia	<i>Ambrosia pumila</i>	3-33
Orcutt's brodiaea	<i>Brodiaea orcuttii</i>	3-38
Palmer's ericameria	<i>Ericameria palmeri</i> ssp. <i>palmeri</i>	3-45
<b>Species not likely to occur within the <i>Chula Vista Subarea</i></b>		
Shaw's agave	<i>Agave shawii</i>	3-32
Encinitas baccharis	<i>Baccharis vanessae</i>	3-36
Nevin's barberry	<i>Berberis nevinii</i>	3-37
Thread-leaved brodiaea	<i>Brodiaea filifolia</i>	3-37
Dunn's mariposa lily	<i>Calochortus dunnii</i>	3-39
Lakeside ceanothus	<i>Ceanothus cyaneus</i>	3-40
Short-leaved dudleya	<i>Dudleya blochmaniae</i> ssp. <i>brevifolia</i>	3-44
Gander's pitcher sage	<i>Lepechinia ganderi</i>	3-49
Willowy monardella	<i>Monardella linoides</i> var. <i>viminea</i>	3-51
Felt-leaved monardella	<i>Monardella hypoleuca</i> spp. <i>lanata</i>	3-51
Dehesa bear-grass	<i>Nolina interrata</i>	3-53

The following specific provisions to insure avoidance and minimization of impacts to Narrow Endemic Species will also be implemented as part of this Subarea Plan.

#### **5.2.3.1 Development Areas within Covered Projects**

Covered Projects provide protection of Narrow Endemic Species through consideration of Narrow Endemic Species in the Preserve design for those projects. Take of Covered Species, including Narrow Endemic Species, for Development Areas within Covered Projects will be extended at the time of development approval, consistent with the provisions of this Subarea Plan. No limitations on impacts to Narrow Endemic Species within the Development Areas of Covered Projects, other than specified in Project-Specific Management

\* See Section 4.0 for more detailed information on these species.

Requirements and/or Conditions for Coverage cited in Section 7.5.6 will be applied.

#### ***5.2.3.2 100% Conservation Areas within Covered Projects***

Projects located within the 100% Conservation Areas of Covered Projects (i.e., within the Preserve) are limited to uses described in Sections 6.1, 6.2 and 6.3 of this Subarea Plan. Impacts to covered Narrow Endemic Species from Planned and Future Facilities located within the 100% Conservation Areas of Covered Projects will be avoided to the maximum extent practicable. Where impacts are demonstrated to be unavoidable, impacts will be limited to 5% of the total Narrow Endemic Species population within the Project Area. Findings of equivalency will be made by the City for such Take Authorization for covered Narrow Endemic Species, pursuant to Section 5.2.3.6 of this Subarea Plan. The City will forward written findings of equivalency to the Wildlife Agencies. Within 30 days of receipt of mailed notice of findings from the City the Wildlife Agencies may submit to the City a written finding of non-concurrence on the facts of the City's findings. If such finding of non-concurrence is made within 30 days, the City will confer with the Wildlife Agencies to develop agreement upon an appropriate location for the Planned or Future Facility in question. If the Wildlife Agencies do not respond within 30 days after receipt of mailed notice, the City shall deem the written findings accepted.

If impacts exceed 5% of the covered Narrow Endemic Species population within the Project Area after comprehensive consideration of avoidance and minimization measures, the City must make a determination of biologically superior preservation consistent with Section 5.2.3.7 of this Subarea Plan. The City will forward its written determination of biologically superior preservation to the Wildlife Agencies for review. The Wildlife Agencies may submit to the City within 30 days of receipt of mailed notice of findings from the City a written finding of non-concurrence on the facts of the City's findings. If such finding of non-concurrence is made within 30 days, the City will confer with the Wildlife Agencies to develop agreement upon an appropriate location for the Planned or Future Facility in question. If the Wildlife Agencies do not respond within 30 days after receipt of mailed notice, the City shall deem the written findings accepted.

The Planned and Future Facilities listed in Sections 6.3.3.1 and 6.3.3.2 of this Subarea Plan are an integral part of this Subarea Plan, and will necessarily traverse the Preserve. When consultation is required pursuant to this Section, the Wildlife Agencies will work cooperatively with the City to site Planned and Future Facilities in the least environmentally sensitive location(s). The consultation will not result in any prohibition of construction of any Planned or Future Facility through the Preserve.

#### ***5.2.3.3 Development Areas outside of Covered Projects***

Development projects within Development Areas outside of Covered Projects and regulated by the HLIT will avoid impacts to covered Narrow Endemic Species to the maximum extent practicable. Where impacts are demonstrated to be unavoidable, impacts within these Development Areas will be limited to 20% of the total Narrow Endemic Species population within the Project Area. Findings of equivalency, as defined in Section 5.2.3.6 of this Subarea Plan, will be made by the City for such Take Authorization of the covered Narrow Endemic Species.

If, after comprehensive consideration of avoidance and minimization measures, impacts exceed 20% of the covered Narrow Endemic Species population within the Project Area, the City must make a determination of biologically superior preservation consistent with Section 5.2.3.7 of this Subarea Plan. The City will forward its written determination of biologically superior preservation to the Wildlife Agencies for review. Within 30 days of receipt of mailed notice of findings from the City the Wildlife Agencies may submit to the City a written finding of non-concurrence on the facts of the City's findings. If such finding of non-concurrence is made within 30 days, the City will confer with the Wildlife Agencies to resolve Narrow Endemic Species issues associated with the proposed development. If the Wildlife Agencies do not respond within 30 days after receipt of mailed notice, the City shall deem the written findings accepted.

#### ***5.2.3.4 100% Conservation Areas outside of Covered Projects***

Projects within 100% Conservation Areas outside of Covered Projects and regulated by the HLIT Ordinance will be limited to uses described in Sections 6.1, 6.2 and 6.3 of this Subarea Plan. In 100% Conservation Areas, Planned and Future Facilities must avoid impacts to covered Narrow Endemic Species to the maximum extent practicable. Where impacts are demonstrated to be unavoidable, impacts within the 100% Conservation Areas will be limited to 5% of the total Narrow Endemic Species population within the Project Area. Findings of equivalency will be made by the City for Take of the covered Narrow Endemic Species, pursuant to Section 5.2.3.6 of this Subarea Plan. The City will forward its written findings of equivalency to the Wildlife Agencies. The Wildlife Agencies may submit to the City, within 30 days of receipt of mailed notice of findings from the City, a written finding of non-concurrence on the facts of the City's findings. If such finding of non-concurrence is made within 30 days, the City will confer with the Wildlife Agencies to develop agreement upon an appropriate location for the Planned or Future Facility in question. If the Wildlife Agencies do not respond within 30 days after receipt of mailed notice, the City shall deem the written findings accepted.

If impacts exceed 5% of the covered Narrow Endemic Species population within the Project Area after comprehensive consideration of avoidance and minimization measures the City must make a determination of biologically

superior preservation, consistent with Section 5.2.3.7 of this Subarea Plan. The City will forward its written determination of biologically superior preservation to the Wildlife Agencies for review. The Wildlife Agencies may submit to the City, within 30 days of receipt of mailed notice of findings from the City, a written finding of non-concurrence on the facts of the City's findings. If such finding of non-concurrence is made within 30 days, the City will confer with the Wildlife Agencies to develop agreement upon an appropriate location for the facility in question. If the Wildlife Agencies do not respond within 30 days after receipt of mailed notice, the City shall deem the written findings accepted.

#### ***5.2.3.5 75-100% Conservation Areas***

Development within the 75-100% Conservation Areas is limited to 25% of the mapped 75-100% Conservation Area and will be directed to the least environmentally sensitive location. Development projects within the 75-100% Conservation Area will avoid impacts to covered Narrow Endemic Species to the maximum extent practicable. Where impacts are demonstrated to be unavoidable, impacts within the 75-100% Conservation Areas will be limited to 20% of the total Narrow Endemic Species population within the Project Area. Findings of equivalency will be made by the City for Take Authorization of the covered Narrow Endemic Species, pursuant to Section 5.2.3.6 of this Subarea Plan.

If impacts exceed 20% of the covered Narrow Endemic Species population within the Project Area after comprehensive consideration of avoidance and minimization measures the City must make a determination of biologically superior preservation, consistent with Section 5.2.3.7 of this Subarea Plan. The City will forward such written determination of biologically superior preservation to the Wildlife Agencies for review. The Wildlife Agencies may submit to the City, within 30 days of receipt of mailed notice of findings from the City, a written finding of non-concurrence on the facts of the City's findings. If such finding of non-concurrence is made within 30 days, the City will confer with the Wildlife Agencies to resolve Narrow Endemic Species issues associated with the proposed development. If the Wildlife Agencies do not respond within 30 days after receipt of mailed notice, the City shall deem the written findings accepted.

Table 5-5 provides a summary of the Narrow Endemic Species protection provisions described in narrative form in Sections 5.2.3.1 through 5.2.3.5 of this Subarea Plan.

**Table 5-5: Summary of Protection Provisions for Narrow Endemic Species**

	Development Areas within Covered Projects	100% Conservation Areas within Covered Projects *	Development Areas Regulated by the HLIT Ordinance	100% Conservation Areas Regulated by HLIT Ordinance *	75-100% Conservation Areas
No limit on encroachment	✓				
Encroachment limited to 5% of the Narrow Endemic Species population with findings of equivalency made by City and sent to Wildlife Agencies		✓		✓	
Encroachment limited to 20% of Narrow Endemic Species population with findings of equivalency made by City			✓		✓
Encroachment exceeds 5% of population with determination of biologically superior preservation made by City and sent to Wildlife Agencies		✓		✓	
Encroachment exceeds 20% of population with determination of biologically superior preservation made by City and sent to Wildlife Agencies			✓		✓

\*Projects limited to uses described in Section 6.1, 6.2 and 6.3 of this Subarea Plan.

#### ***5.2.3.6 Equivalency Findings***

The following information will be included in the equivalency findings related to impacts to covered Narrow Endemic Species:

1. Definition of the Project Area.
2. A written description of the project.
3. A written description of biological information available for the project site including the results of narrow endemic surveys.
4. Written finding of infeasibility of total avoidance of Narrow Endemic Species' population(s).
5. Quantification of impacts to Narrow Endemic Species associated with the project including direct and indirect effects.
6. A written description of project design features that reduce indirect effects such as edge treatments, landscaping, elevation differences; minimization; and/or compensation through restoration or enhancement.
7. Description of measures proposed to compensate for identified impacts in a manner that demonstrates that the proposed design including compensation would result in a long-term Preserve design for the species of concern that is functionally equivalent to or better than the Preserve design that would occur in the absence of the identified impact. The equivalency analysis will be based on the particular requirements of the species of concern.
8. A summary conclusion, including findings of consistency with the applicable percentage criterion.

#### ***5.2.3.7 Determination of Biologically Superior Preservation***

A determination of biologically superior preservation by the City will be based upon the criteria for findings of equivalency defined in Section 5.2.3.6 of this Subarea Plan as well as an expanded written description of the project including information demonstrating that although the proposed project would exceed the 5% Narrow Endemic Species impact threshold, it would result in an overall Preserve design and configuration biologically superior to that which would occur under a project alternative within the 5% threshold.



Demonstration that the biologically superior alternative would provide benefits with respect to Preserve design and configuration should be considered in the context of the effects on following factors:

1. Conserved habitats;
2. Covered Species;
3. Habitat linkages and function of Preserve areas;
4. Preserve configuration and management;
5. Ecotones or other conditions affecting species diversity;
6. Species of concern not on the Covered Species list.

#### **5.2.4 Wetlands Protection Program**

Pursuant to this section of the Subarea Plan, Wetlands protection will be provided throughout the Subarea through individual project entitlement reviews and the associated CEQA process. The process will provide an evaluation of Wetlands avoidance and minimization and will ensure compensatory mitigation within the *Chula Vista Subarea* or *Chula Vista Planning Area* for unavoidable impacts to Wetlands, thereby achieving no overall net loss of Wetlands.

As part of the CEQA review, development projects which contain Wetlands will be required to demonstrate that impacts to Wetlands have been avoided to the greatest extent practicable and, where impacts are nonetheless proposed, that such impacts have been minimized. For unavoidable impacts to Wetlands, the City will apply the Wetlands mitigation ratios identified in Table 5-6. The Wetlands mitigation ratios provide a standard for each habitat type but may be adjusted depending on the functions and values of both the impacted Wetlands as well as the Wetlands mitigation proposed by the project. The City may also consider the wetland habitat type(s) being impacted and utilized for mitigation in establishing whether these standards have been met.

The Wildlife Agencies will review the mitigation program as part of the CEQA public review process. Projects that document highly degraded habitat value may request a reduced mitigation ratio from those shown in Table 5-6. If a reduced mitigation ratio has been proposed, the Wildlife Agencies may submit a letter of concurrence or non-concurrence to the City. If a letter of non-concurrence is received by the City from the Wildlife Agencies during the CEQA public review period, the City will not approve the mitigation ratio reduction. If no written concurrence or non-concurrence is received by the City from the Wildlife Agencies during the CEQA public review process, the mitigation ratio reduction may be approved by the City.

Additionally, this component of the Subarea Plan is not intended to result in subjecting projects to additive or, in some measure, duplicative, mitigation requirements for the same wetlands impacts evaluated under the Federal and/or State wetland permitting process. Thus, the City reserves the right to provide flexibility in the CEQA mitigation analysis and the Mitigation Monitoring and Reporting Program (MMRP) requirements to enable a project applicant to substitute the mitigation measures imposed by another Federal or State agency for the same wetlands impacts for the mitigation imposed under this City program; provided that the Federal or State agency mitigation measures are equivalent or greater than those imposed by the City.

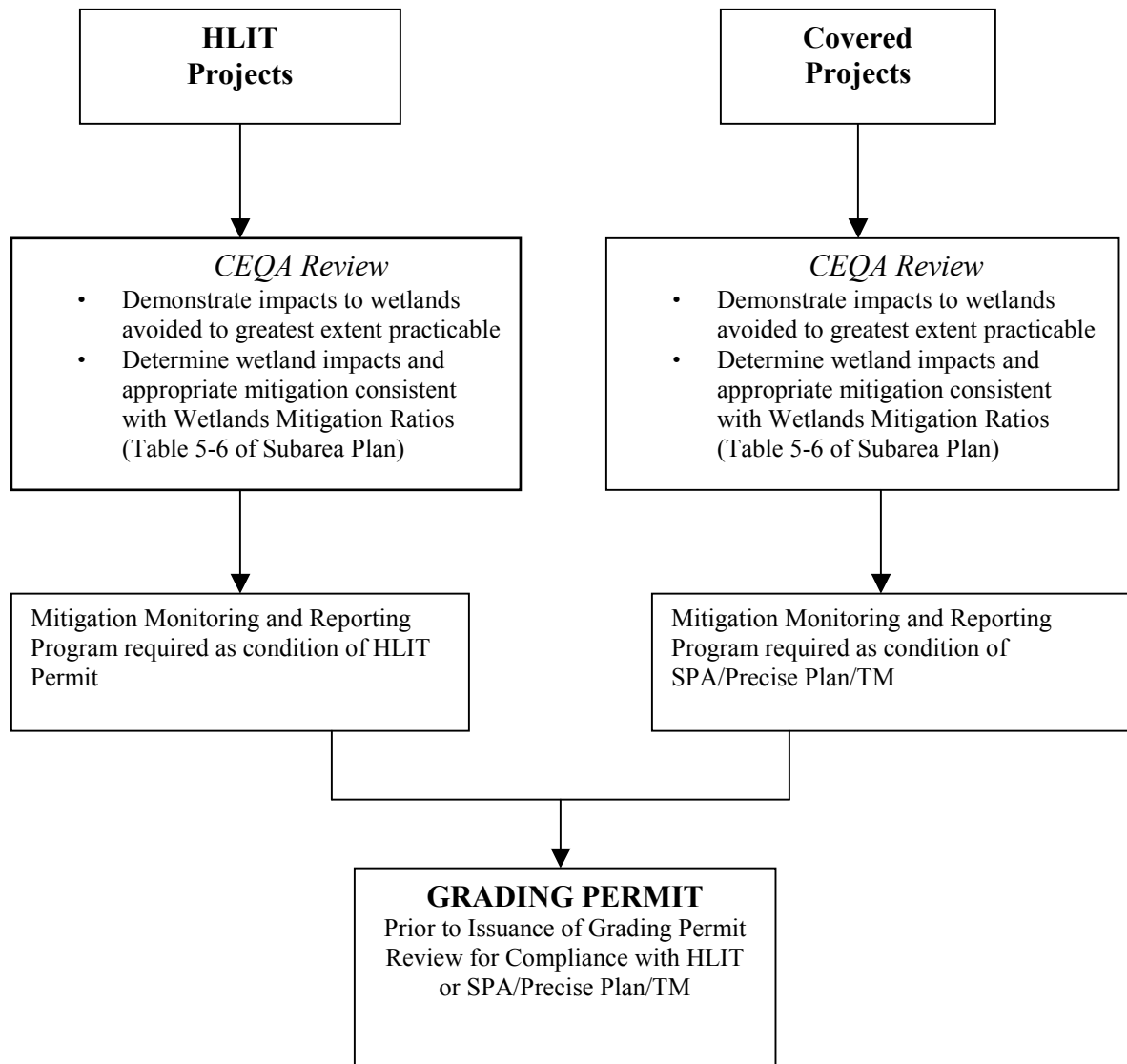
**Table 5-6: Wetlands Mitigation Ratios**

<b>Coastal Wetlands</b>	
Salt Marsh	4:1
Saltpan	4:1
<b>Riparian Habitats</b>	
Oak Riparian Forest	3:1
Riparian Forest	3:1
Riparian Woodland	3:1
Riparian Scrub	1:1 to 2:1
Riparian Scrub (Coastal Overlay Zone)	3:1
<b>Open Water/ Freshwater</b>	1:1
<b>Freshwater Marsh</b>	1:1 to 2:1
<b>Freshwater Marsh (Coastal Overlay Zone)</b>	4:1
<b>Natural Flood Channel</b>	1:1 to 2:1
<b>Disturbed Wetlands</b>	1:1 to 2:1
<b>Vernal Pools</b>	2:1 to 4:1
<b>Marine Habitats</b>	2:1
<b>Eelgrass Beds</b>	2:1

The Wetlands mitigation program will be included in the project's MMRP which is incorporated as a condition of the project's entitlement permit. For development outside of Covered Projects, implementation of Wetlands protection and the MMRP will be achieved through the HLIT permit. For Covered Projects, implementation of Wetlands protection and MMRP will be achieved through associated SPA/Precise Plans and/or Tentative Maps (TMs). For Covered Projects located in Otay Ranch, mitigation will be consistent with the policies and intent of the Otay Ranch RMP. Where internal inconsistencies occur, the more restrictive measure and/or policy shall apply. In addition, as described in Section 5.2.1, the City's Grading Ordinance will be amended to require verification of compliance with the conditions of the applicable entitlement permit prior to the issuance of a permit to impact the Wetlands (e.g. grading permit).

A brief overview of the process is outlined in the following flow chart:

### **Wetlands Protection Review Process**



#### ***5.2.4.1 Avoidance and Minimization within the Preserve***

Minimization of impacts to Wetlands within the Preserve will be assured through implementation of Subarea Plan requirements which restrict uses and apply siting criteria to development within the 100% Conservation Areas and 75-100% Conservation Areas. Permitted uses within the 100% Conservation Area are generally limited to public infrastructure (Planned and Future Facilities) as further described in Section 6.1 through 6.3 of this Subarea Plan. All Planned and Future Facilities are subject to specific siting criteria, detailed in Section 6.3.3.4, which

will direct public facilities away from sensitive resources such as Wetlands. In the 75-100% Conservation Areas, development is limited to 25% of the mapped area. Avoidance and minimization of impacts to Wetlands will be assured as all development in the 75-100% Conservation Areas is directed through the HLIT permitting process to the least environmentally sensitive portion of the site, pursuant to Section 5.2.2.

#### ***5.2.4.2 Wetland Conservation Projections***

Implementation of this Subarea Plan is anticipated to result in conservation of over 99% of the existing Wetlands in the Chula Vista Subarea. Approximately 1,080 acres of Wetlands have been identified within the Chula Vista Subarea. Over 93% (1,005 acres) are located within the Preserve. Another 6% (67 acres) are fully protected through existing Federal and/or State permits, or are within public ownership. The remaining less than 1% of Wetland resources (approximately 8 acres) are located in areas planned for development. The following provides a summary of the status of Wetland resources located outside the Preserve.

An estimated 75 acres of Wetlands are located outside the Preserve. Approximately 22 acres represent Wetland mitigation areas that are fully protected through existing Federal and/or State permit requirements. These include 16.5 acres protected as part of the existing Eastlake 404/1600 permit mitigation program, and 5.0 acres included in and protected by the existing Rolling Hills Ranch Subarea II 404/1600 permit mitigation program.

Approximately 32 acres of Wetlands outside the Preserve are located adjacent to San Diego Bay and are owned by the State of California. An additional approximately 13 acres of Wetlands is owned by the City of Chula Vista. Located in the Sweetwater River basin and surrounded by the Chula Vista Municipal Golf Course, these Wetlands are not anticipated to be impacted by development, as redevelopment of the golf course site to other uses is not contemplated.

The remaining 8 acres of identified Wetlands outside the Preserve are located in development project areas. Approximately 2 acres of riparian-related Wetlands are located within the Rolling Hills Ranch Subarea III project area. Applications for 404 and 1600 permits related to proposed impacts to a portion of these Wetlands have been submitted by the project developer. In addition, approximately 6 acres of Wetlands are located adjacent to San Diego Bay, within the Midbayfront project site. If proposed for impact by development, the Wetlands on the Midbayfront project site will be subject to the HLIT regulations, including avoidance, minimization and mitigation, as well as Federal and State wetlands regulations.

#### ***5.2.4.3 Compliance with Existing Federal and/or State Wetlands Regulations***

In addition to the City's Wetlands Protection Program, Wetlands are afforded protection under existing Federal and State law and regulatory programs. The Federal Clean Water Act, the California Porter-Cologne Water Quality Control Act and the California Fish and Game Code provide protection to Wetland habitats and species through Federal and State regulatory permitting and agreements. Where applicable, project proponents must submit an application for and receive Federal Section 404 and State Section 1600 permits prior to impacting most wetlands. Applicants must also apply to Regional Water Quality Control Board for Waste Discharge Requirements prior to any discharges, including discharges from land that may affect any waters of the state. Water Discharge requirements must implement Basin Plans that designate beneficial uses and water quality criteria for water-bodies, including wetlands.

Mitigation for an impact to wetlands must be consistent with the Federal policy of no overall net loss of wetland functions and values, and Section 404(b)(1) guidelines (40 C.F.R. Part 230). Habitats and species that are the subject of these permits require, as conditions of their approval, conservation and/or mitigation resulting in avoidance or functional equivalent value mitigation. State guidelines for wetland permitting also adhere to a no net loss policy for wetland acreage, functions and values. The CDFG Code (Section 1600 et seq.) states that projects which substantially alter the flow or bed, bank or channel of any river, stream or lake designated by the CDFG should first notify the CDFG, which may determine that a Streambed Alteration Agreement is required. As part of the City's Wetlands Protection Program, compliance with conditions of the Federal Section 404 and State Section 1600 permits must be demonstrated prior to issuance of a grading permit.

Projects that are regulated by Federal agencies will continue to be subject to Section 7 Consultations under the ESA. Those projects that are subject to a Section 7 Consultation will be evaluated to insure that the project is consistent with this Subarea Plan and wetlands mitigation program. The level of conservation afforded by the provisions of this Subarea Plan to Covered Species has been established through extensive consultation with, and review by, the Wildlife Agencies. Therefore, projects undergoing Section 7 Consultations which are consistent with the provisions of this Subarea Plan will receive Take Authorization for Covered Species through the Take Authorization permit issued to the City.

### **5.2.5 Otay Ranch Grazing Ordinance**

Subsequent to conditional adoption of the Chula Vista Subarea Plan by the City Council in October 2000, the City immediately initiated preparation of a Grazing Ordinance, which will implement the Otay Ranch Range Management Plan (Appendix F7 of the RMP2), in the Otay Ranch Planning Component within the City. The ordinance would be effective once the City has received Take Authorization. The Range Management Plan analyzed current grazing conditions on Otay Ranch and identified the means by which to achieve the policies and standards identified in the RMP for managed grazing activities. The Otay Ranch Grazing Ordinance will codify the Preserve Management Goals and Recommendations of the Range Management Plan for the Otay River Valley Management Area, including the following:

1. No increase in irrigation will be allowed except for temporary irrigation that may be installed as part of habitat restoration plans;
2. Grazing by sheep and goats will not be allowed;
3. Elimination of grazing in the riparian habitat in the Otay River Valley (Horse, River Valley West, River Valley East, and O'Neal pastures shown on Figure 5-2) during the winter through summer months following the onset of winter rains;
4. Elimination of grazing in Salt Creek (O'Neal and Salt Creek Pastures shown on Figure 5-2) during the breeding season of the coastal California gnatcatcher from February 15 through August 15, annually;
5. Elimination of grazing in areas designated for restoration for a period of time prior to initiation of restoration activities to facilitate soil preparation and exotic plant control; and
6. Maintaining any existing or future fencing and gating installed for range management purposes.

### **5.2.6 Amendments to Chula Vista Local Coastal Plan**

Development projects within the coastal zone will be required to be consistent with both the adopted City Local Coastal Plan (LCP), as amended from time to time, and this Subarea Plan. Projects within the coastal zone will be processed under the regulations of the adopted LCP and will be subject to the HLIT Ordinance for mitigating potential impacts to upland and Wetland habitats.

### **5.2.7 Soil Salvage**

As a means of reducing impacts to sensitive species and habitats from development allowed by the Subarea Plan, the City will continue its practice of requiring soil, seed and plant salvage on a project-by-project basis. Project review and CEQA analysis will identify appropriate salvage opportunities. Mitigation measures and conditions of project

approval would specify the soils, seed and plant material to be salvaged, identify the procedures for salvage, and specify locations and time frames for use of material, as appropriate.

## **5.2.8 Implementation Tools for Conservation of the Quino Checkerspot Butterfly**

Impacts associated with Planned and Future Facilities within the Preserve and other development outside of the Preserve will be minimized according to the measures described in Sections 5.2.8.1 and 5.2.8.2.

### ***5.2.8.1 Infrastructure in the Preserve***

Impacts will not be permitted within the Preserve except as provided in Section 6.0 of this Subarea Plan, generally in association with Planned and Future Facilities. Impacts to QCB habitat in the Preserve will be minimized, as described below, while still allowing for construction of Planned and Future Facilities as provided for in this Subarea Plan. Infrastructure projects constructed within the Preserve will be subject to the following sequence of measures to avoid and minimize impacts to QCB and QCB habitat:

- (1) A habitat assessment will be conducted in potential facility locations as part of the project siting and design process.
- (2) QCB surveys will be conducted in appropriate habitat by a qualified biologist in accordance with the most recent survey protocol adopted by the USFWS.
- (3) If QCB are observed within the proposed Project Area, the project will be designed to avoid impacts to QCB habitat to the maximum extent practicable.
- (4) The following avoidance criteria will be applied specifically to Preserve Habitat-Category A areas located east of SR 125:
  - a. For Preserve Habitat-Category A areas east of SR 125 that are within the Salt Creek drainage and the Otay River Valley and associated with the property known as the New Millennium Property, single patches of plantago equal to or greater than 50 square meters, or if less than 50 square meters any combination of patches within 200 meters of each other which are equal to or greater than 50 square meters, and as mapped in the habitat assessment prepared by Dudek and Associates (Appendix J) will be considered “significant QCB habitat patches”.
  - b. For Preserve Habitat-Category A areas located east of SR 125 that are within the Salt Creek drainage and the Otay River Valley and outside of the New Millennium Property, a detailed habitat assessment will be conducted using the same methodology employed by Dudek and Associates (1999) to identify patches of QCB habitat, including mapping

patches of *Plantago erecta* and other host plants, if applicable. In this area, single patches of plantago equal to or greater than 50 square meters, or if less than 50 square meters any combination of patches within 200 meters of each other which are equal to or greater than 50 square meters, will be considered “significant QCB habitat patches”.

- c. Projects shall be designed to avoid “significant QCB habitat patches” to the maximum extent practicable, regardless of whether QCB are observed. If impacts to these habitat patches cannot be avoided, the City will consult with the Wildlife Agencies and the Wildlife Agencies will cooperatively work with the City to site the proposed facility in a location that will best minimize impacts to QCB habitat. The City will submit a written request for input to the Wildlife Agencies. The Wildlife Agencies will meet and confer with the City and, no later than 60 days of receipt by the Wildlife Agencies of written notice from the City, resolution on the appropriate location of the proposed facility will be completed.
  - d. During joint review of a project proposing to impact one or more “significant QCB habitat patches”, a cooperative assessment will be made by the City and Wildlife Agencies to determine the overall significance of the proposed impacts to “significant QCB habitat patches”. The assessment will be made within the context of the quality and location of other QCB habitat within the Preserve at the time of the assessment. Evaluation of proposed project impacts to significant habitat patches shall also take into consideration all of the other components of the City’s QCB program. In particular, if the planned QCB habitat restoration/enhancement component has demonstrated success, the City and the Wildlife Agencies shall consider the restoration/enhancement component in their evaluation of the individual project’s impacts.
  - e. When the City has successfully completed, as determined by the Wildlife Agencies, at least 10 acres of QCB restoration/enhancement within the Preserve in the Salt Creek/Otay River Valley area, the provisions of Section 5.2.8.1 (4)(a-d) will no longer be applicable.
- (5) For construction in areas adjacent to occupied habitat, dust control measures (i.e., watering) will be applied during grading activities.
  - (6) As part of the overall Preserve management strategy, a weed control program will be established for all water/sewer line access roads built through potential QCB habitat. This will include road construction using a concrete-treated base material with aggregate rock to prevent vegetation growth on the road surface, while allowing sufficient percolation to minimize flows. The zone of influence to be subject to the weed control program will be determined by the City’s Habitat Manager based on site-specific conditions.



#### ***5.2.8.2 Development Areas***

All areas outside of the Preserve will have Take Authorization for the QCB. Outside of the Preserve, protocol surveys for QCB presence will be required for Development Areas only within Non-Preserve Habitat-Category A east of SR-125.

For development projects proposed within Non-Preserve Habitat-Category A areas east of SR-125, project proponents will be required to work with the Wildlife Agencies to enable one-time only salvage by the Wildlife Agencies of larvae, butterflies and/or appropriate habitat constituents in areas identified to have QCB. In no case will a project proponent be required to delay project grading to allow for initiation of the QCB flight season for purposes of collecting larvae and/or butterflies. It will not be the responsibility of the City or landowner to establish a breeding facility or provide locations for placement of butterflies or larvae.

If, during surveys conducted in Development Areas in Non-Preserve Habitat-Category A areas east of SR-125, QCB are observed within 300 feet of the Preserve boundary, the project proponent will be required to notify the City and the Wildlife Agencies. A boundary adjustment may be initiated by either the applicant, the City or the Wildlife Agencies in order to minimize potential impacts to QCB. Any proposed boundary adjustment will be subject to the process set forth in Section 5.4.2 of this Subarea Plan. The Wildlife Agencies will work cooperatively with the City and the applicant to determine an appropriate adjustment to the Preserve boundary that will minimize impacts to QCB while still ensuring that the modified boundary does not result in a reduction of development area on the project site.

For all Development Areas adjacent to Preserve Habitat-Category A (refer to Figure 4-1), regardless of the QCB survey results, a qualified biological monitor will be onsite during clearing, grubbing and/or grading activities to ensure that the approved limits of disturbance are not exceeded and that dust control measures are being implemented. If high-visibility fencing that clearly demarcates the limits of disturbance is erected, the monitor will visit the site at least once a week during clearing, grubbing and/or grading operations to ensure that the fencing is being maintained and remains in the appropriate location. If the limits of disturbance are simply staked or flagged, the monitor will check the site daily to ensure that the approved limits of disturbance are not exceeded.

### **5.3 Incidental Take**

The Take Authorization issued to the City of Chula Vista based on the Chula Vista Subarea Plan and IA will provide the City the authority to permit the Take of Covered Species and their habitats associated with development. Take of Chula Vista Covered Species and Species Adequately Conserved associated with development of park and related recreation facilities throughout the Otay Valley Regional Park, consistent with the Otay Valley Regional Park Concept Plan, will also be authorized consistent with this Subarea Plan. Permits will be issued by the City, consistent with this Subarea Plan, the Federal Section 10(a)(1)(B) permit and the State Section 2835 permit for projects within the City's incorporated limits.

Take permits for projects located outside the City boundaries in the *Chula Vista MSCP Planning Area* will be issued by the County of San Diego subject to the County Subarea Plan, South County Segment, County IA and the County's Section 10(a)(1)(B) Permit and State Section 2835 Permit. Take Authority for projects which subsequently annex into the City may be provided pursuant to Section 5.3.1.

#### **5.3.1 Take Authorization and Annexations**

When new territory is added to the City through annexation, the following will occur:

##### ***5.3.1.1 New Territory Added to the City from Jurisdiction with Approved Subarea Plan***

When property is annexed into the City from another jurisdiction which has an approved Subarea Plan, the following applies:

1. An MSCP Annexation Agreement shall be reached between the City, the detaching jurisdiction, and the Wildlife Agencies as part of the annexation process, to ensure that any development of the annexed land proceeds in accordance with the conservation goals of the MSCP. If plans for development of the annexing area are consistent with this Subarea Plan and the detaching jurisdiction's approved Subarea Plan, the Wildlife Agencies will not withhold approval of the MSCP Annexation Agreement.
2. Take Authorization for the annexed territory will be transferred from the detaching jurisdiction to the City upon approval of the Wildlife Agencies, in accordance with applicable permit transfer requirements.
3. The City's IA shall apply to the annexed territory upon recordation of the annexation in the County Assessor's Office, without the need for amendment of the IA.
4. The MSCP Annexation Agreement will be automatically incorporated by reference into the Subarea Plan. If necessary, the Subarea Plan will be amended by administrative approval to incorporate the annexed territory,

including estimated Take and conservation acreage as reflected in the MSCP Annexation Agreement. Revisions to the Subarea Plan, if needed, will not be required to be completed prior to the transfer of Take Authority.

#### ***5.3.1.2 New Territory Added to the City from Jurisdiction without Approved Subarea Plan***

If an annexing territory is detaching from a jurisdiction for which a Subarea Plan or other Habitat Conservation Plan has not been approved by the Wildlife Agencies, development within the area to be annexed must be consistent with the MSCP and this Subarea Plan, and an amendment to this Subarea Plan and incidental take permit will be required.

### **5.4 Preserve Boundary Adjustments**

Adjustments to the Preserve boundaries may be made without the need to amend either this Subarea Plan or the MSCP Subregional Plan where the new Preserve boundary results in the same or higher biological value of the Preserve. For the purposes of this Subarea Plan, there are two categories of Preserve line adjustments: mapping conflicts, and boundary adjustments.

#### **5.4.1 Mapping Conflicts**

Correction of mapping conflicts may be made by the City when there is a discrepancy between the Preserve map and one or more of the other mapping databases (e.g., vegetation, approved “hard-line plan,” updated topography, etc.). Mapping conflicts covered by this category include requests for Preserve line alterations when mapping errors have placed an area into the Preserve which is developed or expressly intended for development and/or when mapping errors have removed from the Preserve an area with sensitive resources expressly intended to be conserved. In the case of a mapping conflict, the City will determine the adjusted Preserve line pursuant to the following process:

1. City of Chula Vista Director of Planning and Building (or designee) declares that a mapping conflict has occurred and determines the revised Preserve line based on review of all available information and data.
2. The City notifies the Wildlife Agencies in writing of the mapping conflict and corresponding revised Preserve line. If the mapping conflict only affects existing developed/urban land, no response from the Wildlife Agencies is necessary.
3. The revised Preserve line becomes the adopted Preserve line unless the Wildlife Agencies object to the mapping conflict within 30 days of receipt of City’s written notice to the Wildlife Agencies. Objections by the Wildlife Agencies to mapping conflicts must be in writing and must state the rationale in support of the objection.
4. If the City receives written objection from the Wildlife Agencies to a revised Preserve line resulting from a mapping conflict within 30 days of receipt of City’s written

notice to the Wildlife Agencies, then the request will be elevated to a “boundary adjustment,” described in Section 5.4.2 of this Subarea Plan.

5. If the Wildlife Agencies fail to respond to the City’s notice within 30 days of receipt of the City’s determination, the decision of the City Director of Planning and Building will be deemed accepted.

#### **5.4.2 Boundary Adjustments**

Boundary adjustments may occur for reasons such as: (1) new biological information obtained through site-specific studies; (2) unforeseen engineering design opportunities or constraints; (3) a landowner or other constituent request to change boundaries in the context of the equivalency standard set forth in this section, and/or (4) timely and adequate notice of objection by the Wildlife Agencies to a mapping conflict determination made by the City Director of Planning and Building as defined by Section 5.4.1 of this Subarea Plan. In the case of a Boundary Adjustment, the City will determine the adjusted Preserve boundary pursuant to the following process:

1. A preliminary determination of the biological value of a proposed boundary adjustment will be made by the City Director of Planning and Building (or designee) in accordance with Section 5.4.2 of the MSCP Subregional Plan and/or Section 5.2.3.6 of this Subarea Plan, if appropriate.
2. The City notifies the Wildlife Agencies in writing of the boundary adjustment, including written findings of equivalency made by the City Director of Planning and Building.
3. The adjusted boundary becomes the adopted boundary upon project approval unless the Wildlife Agencies object to the adjusted boundary within 30 days of receipt of City’s written notice to the Wildlife Agencies. Objections by the Wildlife Agencies to boundary adjustments must be in writing and must state the rationale in support of the objection.
4. If the City receives written objection to a determination of a boundary adjustment by the Wildlife Agencies within 30 days of receipt of City’s written notice to the Wildlife Agencies, then the City and Wildlife Agencies will have 60 days to meet, confer, and reach agreement upon final Preserve boundaries. If agreement is not reached, the boundary adjustment as proposed will not be approved.
5. If the Wildlife Agencies fail to respond to the City’s notice within 30 days of receipt of the City’s determination, the decision by the City Director of Planning and Building shall be deemed accepted.

Any adjustments to the Preserve boundary will be disclosed in any necessary environmental documentation prepared for the specific project. An evaluation of the proposed boundary adjustment will be provided in the biological technical report and summarized in the appropriate sections of the environmental document. If it is

determined through the process identified in Section 5.4.2 that the adjustment will result in the same or higher biological value of the Preserve area, no further action by the jurisdictions or Wildlife Agencies shall be required. An adjustment that does not meet the equivalency test will require an amendment to this Subarea Plan (or separate Federal Section 10(a)(1)(B) permit or Section 7 Consultation).

## **5.5 Preserve Assembly Accounting**

The City will prepare and provide to the Wildlife Agencies an annual report of total habitat area lost and habitat area conserved within the *Chula Vista Subarea* and total conservation contributions made to the MSCP Subregional Preserve throughout the *Chula Vista MSCP Planning Area* as a result of development within the City. The annual report will provide this information by vegetation type consistent with Section 5.9 of the MSCP Subregional Plan and the MSCP regional “Habitrak” methodology.

## **5.6 Conservation and Mitigation Banks**

Although formal conservation banks are not required for the sale of upland habitat as mitigation, landowners may establish conservation and/or mitigation banks in areas designated for Preserve with high biological values, such as Narrow Endemic Species or Vernal Pools. Landowners desiring to do so must work with and obtain the approvals of the Wildlife Agencies and the City. Mitigation banks must be established consistent with Federal and State guidelines.

## **5.7 Assurances for Unforeseen Circumstances**

The primary purpose of the Chula Vista MSCP Subarea Plan is to provide for the conservation of Covered Species and address the potential impacts of urban growth, natural habitat loss and species endangerment by mitigating the impacts of Take of the Covered Species resulting from Covered Activities. If the Subarea Plan meets the criteria for issuance of an incidental Take permit (“ITP”) under Section 10 of the ESA, the City will receive the assurances under the “No Surprises” rule of the United States Department of the Interior at 50 C.F.R. sections 17.22(b)(5) and 17.32(b)(5) for Chula Vista Covered Species and Species Adequately Conserved under the Subarea Plan, upon approval of the Subarea Plan and issuance of an ITP to the City and for so long as the Subarea Plan is being properly implemented. Pursuant to the “No Surprises” rule, in the event the USFWS makes a finding of Unforeseen Circumstances, the USFWS will not require the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level agreed to in the Subarea Plan and the Implementation Agreement with respect to Covered Activities without the consent of the City.

The U.S. Department of Interior’s “No Surprises” rule provides in pertinent part at 50 C.F.R. sections 17.22(b)(5)(iii) and 17.32(b)(5)(iii) that:

- A. In negotiating Unforeseen Circumstances, the Director of USFWS will not require the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

- B. If additional conservation and mitigation measures are deemed necessary to respond to Unforeseen Circumstances, the Director of USFWS may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

If, due to Unforeseen Circumstances, additional conservation measures as defined in Section 5.7.1 become necessary, the provisions of this section will apply. However, in the event that Unforeseen Circumstances adversely affect any of the Chula Vista Subarea Plan's Covered Species within the life of the Plan, the City or its Third Party Beneficiaries would not be required to provide additional money, financial compensation, water, land, or land restrictions beyond that required under the Chula Vista Subarea Plan without the City's consent.

Pursuant to the No Surprises Rule, USFWS will not require the City or Third Party Beneficiaries to commit additional water, land, additional land restrictions, or additional money or financial compensation for the Covered Species beyond that provided pursuant to the Subarea Plan, provided that the City and beneficiaries are properly implementing the Subarea Plan. If the Wildlife Agencies subsequently determine that Unforeseen Circumstances have arisen and that additional water, land, additional land restrictions or additional financial compensation beyond that required pursuant to the Subarea Plan are necessary to provide for the conservation of a Covered Species, then the obligation for such additional measures will not rest with the City or Third Party Beneficiaries.

#### **5.7.1 Unforeseen Circumstances Defined**

"Unforeseen Circumstances" (defined in 50 C.F.R. Section 17.3) means changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and the USFWS at the time of the conservation plan's negotiation and development and that result in a substantial and adverse change in the status of the Covered Species.

#### **5.7.2 Relevant Factors**

Pursuant to the "No Surprises" rule at 50 C.F.R. Section 17.22(b)(5)(iii)(C), the USFWS has the burden of demonstrating that Unforeseen Circumstances exist using the best scientific and commercial data available. The findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. In its evaluation the USFWS will consider, but not be limited to, the following factors:

- The size of the current range of the affected Covered Species.
- The percentage of the range of the affected Covered Species that has been adversely affected by Covered Activities under the Subarea Plan.
- The percentage of the range of the affected Covered Species that has been conserved by the Subarea Plan.
- The ecological significance of that portion of the range of the affected Covered Species affected by the Subarea Plan.
- The level of knowledge about the affected Covered Species and the degree of specificity of the Covered Species' conservation program under the Subarea Plan.
- Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected Covered Species in the wild.

### **5.7.3 Limits on Additional Conservation Measures**

Pursuant to the "No Surprises" rule, if the USFWS makes a finding that Unforeseen Circumstances have occurred and assuming the Subarea Plan is being properly implemented, the USFWS may not require additional conservation and mitigation measures of the City beyond those provided for under the Subarea Plan that would involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water or other natural resources otherwise available for development or use under the Subarea Plan without the City's consent. Further, any additional measure required of the City by the USFWS in the event of a finding of Unforeseen Circumstances must maintain the original terms of the Subarea Plan to the maximum extent possible and must be limited to modifications within Preserve and to the Subarea Plan's operating conservation program.

### **5.7.4 Notification**

If either one of the Wildlife Agencies or the City becomes aware of the existence of a potential Unforeseen Circumstance, they shall immediately notify the others of the existence of a potential Unforeseen Circumstance. Except where there is substantial threat of imminent, significant adverse impacts to a Covered Species, USFWS will provide the City and CDFG thirty (30) calendar days notice of a written finding of Unforeseen Circumstances, during which time the Wildlife Agencies will meet with the City to discuss the proposed finding, provide the City and any affected Third Party Beneficiary an opportunity to submit information to rebut the proposed finding, and consider any proposed changes to the conservation strategies for the Preserve and the Subarea Plan's operating conservation program. During the time necessary to determine the nature and extent of any additional or modified mitigation, the City will avoid

contributing to appreciably reducing the likelihood of the survival and recovery of the affected Covered Species in the wild.

#### **5.7.5 Effects of Unforeseen Circumstances or Jeopardy on Take Authorization**

Notwithstanding the limits on conservation measures identified above under Section 5.7.3, the ITP may be revoked by the USFWS pursuant to 50 C.F.R. sections 17.22(b)(8) and 17.32(b)(8) where as a result of an Unforeseen Circumstance or any other cause, continuation of the federal permit would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B) i.e. would appreciably reduce the likelihood of the survival and recovery of the species in the wild, and the inconsistency has not been remedied in a timely fashion. As recognized in the “No Surprises” rule at 50 C.F.R. sections 17.22(b)(6) and 17.32(b)(6), the USFWS, any Federal, State or local agency, or a private entity may take additional actions at their own expense to protect or conserve a species covered under the Subarea Plan.

Pursuant to the “No Surprises” rule, the City and the Wildlife Agencies agree that the following Subarea Plan components are not subject to modification as a result of Unforeseen Circumstances in a manner that would result in an additional commitment of land, water or financial compensation, or additional restrictions on the use of land, water or other natural resources available for development or use under the Subarea Plan on the part of the City, or Third Party Beneficiaries covered under the City’s permit, without the City’s consent:

1. Any in-kind mitigation ratios, including the HLIT Mitigation Ratios as described in Table 5-3;
2. The boundaries of the 100% Conservation Areas;
3. The boundaries of the 75-100% Conservation Areas;
4. The Planned and Future Facilities siting criteria identified in Section 6.3.3 of this Subarea Plan;
5. Preserve management funding, as described in Section 8.0 of this Subarea Plan; or
6. Any other change not provided for under the Plan’s Operating Conservation Program as defined in the IA at Section 2 that would significantly increase the Plan’s costs or significantly affect the interests in land of the City or any of the Third Party Beneficiaries covered under the Chula Vista Subarea Plan.

#### **5.8 Assurances for Changed Circumstances**

Changed Circumstances are defined under the Federal “No Surprises” rule as “changes in circumstances affecting a species or geographic area covered by a conservation plan that can



reasonably be anticipated by plan developers and the USFWS and that can be planned for”. Changed Circumstances to be addressed by this Subarea Plan include the following:

1. Fire, occurring in the same location as a previous fire no sooner than three years following nor longer than ten years subsequent to an initial fire, and damaging up to 30 acres of Preserve habitat.
2. Flood events occurring within the Preserve Floodplains associated with the Otay River Valley and Salt Creek, at greater than 50-year levels and up to and including 100-year levels, as classified by the Federal Emergency Management Agency (FEMA) and determined by the Chula Vista Department of Public Works.
3. Climatic drought up to three years in length, as declared by the California State Department of Water Resources and/or the San Diego County Water Authority.
4. An increase of invasive species within the Preserve to the extent that, as determined by the City Habitat Manager in consultation with the Habitat Management Technical Committee, such increase is of sufficient magnitude to significantly, adversely affect any Covered Species.
5. Listing of a Non-Covered Species.

The USFWS and the City agree that the Changed Circumstances defined by this Section of the Subarea Plan represent all Changed Circumstances to be addressed by Chula Vista. These Changed Circumstances provisions reflect changes in circumstances that can reasonably be anticipated to occur to Covered Species or within dedicated Preserve areas. These Changed Circumstances provisions are not intended to cover the same or similar circumstances outside City jurisdiction nor if they occur within the *Chula Vista Subarea* but outside of the Preserve and where the City has no legal authority to carry out the Planned Responses, nor if they occur within the hard-line Preserve area depicted on Figure 1-2 but before the land is lawfully dedicated or conveyed to the Preserve.

Except for the future Listing of a non covered species, each of the defined Changed Circumstances includes an assessment of risk, a description of preventative measures, and a summary of Planned Responses (measures to be undertaken in the case of Changed Circumstances) as provided in Sections 5.8.1 – 5.8.4. Preventative measures are those measures that are or will be undertaken by the City to reduce the potential for occurrence of the Changed Circumstance, and/or that reduce the potential for damage to the Preserve resulting from a Changed Circumstance event. Planned Responses are the specific responses that will be undertaken in the event of a Changed Circumstance. Planned Responses will not include any actions beyond those expressly identified in this Section, nor for any event not specifically identified as a Changed Circumstance. Planned Responses will be implemented to the extent that it is possible to do so and remain consistent with the primary goal to prevent harm to the public health, safety and welfare. Planned Responses will be implemented by using the funding sources described in Section 8.4 for each of the Changed Circumstances, and only to the extent provided by the identified funding sources.

### **5.8.1 Repetitive Fire**

For the purpose of defining Changed Circumstance, Repetitive Fire is defined as fire, occurring in the same location as a previous fire no sooner than three years following nor

longer than ten years subsequent to an initial fire, and damaging up to 30 acres of Preserve habitat.

#### ***5.8.1.1 Risk Assessment***

Because fire is a natural feature of the *Chula Vista Subarea*, under normal circumstances natural re-growth of habitat is expected. However, the Wildlife Agencies have indicated that certain Repetitive Fires within the same location of the Chula Vista MSCP Preserve may adversely affect the Covered Species conserved by the Subarea Plan as a result of habitat type conversion from existing habitat(s) to invasive or non-native weeds.

USFWS has indicated that for the habitat types prevalent in this Preserve, including coastal sage scrub, maritime succulent scrub and riparian habitat, a re-burn within the same footprint within ten years of the original burn can adversely hamper natural re-growth and interrupt the ability of the habitat to rejuvenate. After ten years, habitat types prevalent in the Preserve are expected to be fully re-established and capable of natural regeneration. A “Repetitive Fire” (a fire anticipated to occur and to create the potential for type conversion) is therefore considered a fire incident which occurs in the same location as a previous fire incident (initial fire) no more than ten years subsequent to the initial fire.

In addition, Chula Vista Fire Department (CVFD) officials note that vegetation that has been burned requires approximately five years to grow before becoming a potentially hazardous fuel load. It is therefore not anticipated that Repetitive Fire, if it were to occur, would occur in the same location for at least three-to-five years subsequent to an initial fire. For the purpose of defining Changed Circumstances, the City has determined that a Repetitive Fire occurring within the first three years subsequent to an initial fire is therefore not reasonably anticipated.

In order to further estimate the potential for Repetitive Fire, a history of fire incidents throughout the Cities of Chula Vista and San Diego were evaluated. The fire incident history for the City of Chula Vista records 188 wildland fires for the years 1998 through 2001. Only one of these was actually located within the Preserve. Because the level of fire response in urban areas is rapid and responders are highly trained, fire incidents are contained more quickly. Thus, the average area of land burned in the fires was 0.39 acre, and no fire caused damage greater than five acres.

Fire incident data from the larger urban area of the City of San Diego was also reviewed. Fire incidents within the City of San Diego are recorded as “small”, “medium” or “large. The relative percentages of small, medium and large fires experienced by the City of San Diego are consistent with data provided by the CVFD. Approximately 90% occurred in areas of 0-1 acres, 4% in area of 1-5 acres and 6% in areas greater than 5 acres. Both sets of data indicate that in urban areas most fire incidents are contained at an early stage. Because the level of fire

response in urban areas is rapid and responders are highly trained, fire incidents are contained more quickly and rarely damage areas larger than five acres. Thus, the scope of fire incidents within the Preserve is expected to be much smaller than that of wildland fires in less urban situations.

Because implementation of the Subarea Plan will result in larger areas of undeveloped, protected habitat than previously existed within City boundaries, the Chula Vista Fire Chief and Fire Marshal assembled key members of the CVFD to assess the potential that future repetitive fire incidents may burn areas greater than five acres before containment, during the life of the permit.

The Central City PMA is completely surrounded by urban, primarily residential development, which provides immediate access to fire equipment and limits the ability of fire to spread. The North City Preserve Management Area will also be substantially surrounded by new development and/or access roads. The Otay Ranch Preserve Management Area will be the largest contiguous Preserve area in the City and, because it is adjacent to County Preserve land to the east, the area most vulnerable to fire originating from outside the City and to larger burns.

The Otay Ranch Preserve Management Area includes principally the Otay River Valley and associated riparian habitats. Moist riparian vegetation does not represent high-risk fire fuel loads and, in fact, will serve to hinder fire activity. Chula Vista Fire Department staff noted that due to prevailing western winds, fire rarely approaches the City from the east. However, when such occurrences do happen, fire activity is retarded when it reaches the Otay River Valley, as was the case in the most recent fire to affect Salt Creek. Firefighters report that as that fire approached Lower Otay Lake and what is now the southeastern City boundary, the fire event was calmed. The area within Salt Creek was burned by the “tail” of the fire, after the vegetation in the River Valley reduced the intensity of the incident, enabling firefighters to control the burn.

Based on review of available data, knowledge of existing fire fuel loads, fire suppression experience and anecdotal information, the Chula Vista Fire Marshal has determined that fire damage from Repetitive Fire within the Preserve up to 30 acres is foreseeable during the life of the permit. Damage greater than 30 acres due to Repetitive Fire is not foreseeable and would be considered an Unforeseen Circumstance.

#### ***5.8.1.2 Preventative Measures***

Preventative measures to reduce the likelihood of or harm from a single fire in the Preserve are included in the adaptive management provisions as specified in Section 7.0 of this Subarea Plan and will be more specifically identified in the area-specific management directives for each Preserve Management Area.

### *Proximity of Fire Services to Preserve Areas*

The Chula Vista Preserve is primarily an urban Preserve that is, the Preserve is almost entirely surrounded by urban uses. Although the presence of urban uses may increase the potential for fire incidents, it greatly decreases the potential for large, non-contained fires due to the proximate location of fire stations and the proximity, training and experience of urban fire response teams. The overall average response time to fire incidents within the City is under seven minutes. Figure 5-3 depicts the current (shown in red) and planned (shown in blue) City fire stations that serve the Preserve. City of Chula Vista Fire Stations Number 3 and Number 4 are primary respondents to fire incidents within the Central City PMA. City Fire Station Number 6 currently serves both the North City PMA and the Otay Ranch PMA. All three stations are assisted, through an Automatic Aid Agreement by the Bonita Fire District station located on Bonita Road (shown in red with a blue star).

As development occurs within the City's new communities, additional fire stations are planned to be constructed and operated. Station Number 6 will be relocated north from its current location on Otay Lakes Road to Proctor Valley Road immediately adjacent to the North City PMA. In addition, a new fire station will be located on Olympic Parkway immediately adjacent to the Preserve edge of the Otay Ranch PMA. A new station will also be constructed on La Media Road, which will increase fire response capability to the Otay Ranch PMA, particularly for events occurring west of SR-125.

### *Brush Abatement Program*

In order to further reduce the risk of fire, the City has instituted a special weed abatement and brush management program focused particularly on the edges between urban areas and open space Preserve lands. Through this Preserve edge fire risk assessment program, all urban/open space edges are walked annually and assessed for fire load and fire risk. Edge areas are categorized and mapped as high, medium or low fire risk. Figure 5-4 reflects the mapping for the Central City PMA for the year 2001. High fire risk areas are depicted in red moderate risk areas in yellow and low risk areas in green. Using this information, the City is able to annually structure its brush management program to intensify brush management and fire risk reduction efforts in the high risk edge areas between development and Preserve.

### *Emergency Management Plan*

The City will prepare an Emergency Management Plan (Section 7.3.3) that will identify the procedures the City will implement both prior to and during any single fire in the Preserve. The Emergency Management Plan will provide that the City will coordinate an emergency notification and response system that will strive to protect the Covered Species and the Preserve, to the extent that it is

possible to do so and remain consistent with the primary goal of containing and extinguishing the fire to prevent harm to the public health, safety and welfare. The Emergency Management Plan will provide for a triage system that includes notification of the Wildlife Agencies as soon as feasible after the onset of the fire. The Emergency Management Plan will also provide for restricted public access to the Preserve in times of drought, when fire hazard may be high.

#### ***5.8.1.3 Planned Responses to Repetitive Fire***

Upon the occurrence of a Repetitive Fire Changed Circumstance as defined by this Section, the City Habitat Manager will notify the Wildlife Agencies pursuant to the protocol established by the City's Emergency Management Plan described in Section 7.3.3 of this Subarea Plan. Within 30 days of the Repetitive Fire incident, the City Habitat Manager will assess the damage caused by the Repetitive Fire within the Preserve. Depending upon the extent and severity of the fire damage, and as determined by the City Habitat Manager, with concurrence of the Wildlife Agencies, the City will take one of the following actions:

1. Develop and implement a monitoring program to monitor natural re-growth within the damaged area for a period of up to two years. The monitoring program will provide for site visits on a regular basis, as determined by the City Habitat Manager to be appropriate to the scope and severity of the burn. Should monitoring observations indicate that allowing habitat to re-grow without interference is resulting in increased opportunity for invasion by exotic species and/or increased potential for type conversion, as determined by the City Habitat Manager, the Preserve management program in effect at the time will be modified to reduce the potential for such invasion and/or type conversion. The City's Habitat Manager may, at his/her discretion, also activate the Habitat Emergency Advisory Team (HEAT) at any time during the duration of the monitoring program.
2. Immediately activate the Habitat Emergency Advisory Team (HEAT) to advise the City on response efforts to the damage caused by the Repetitive Fire. If/when activated, the HEAT will work with the City Habitat Manager to prepare a Response Action Plan (RAP) and will make recommendations for changes, to the extent feasible, to the Preserve monitoring and management program in response to the damage due to the Repetitive Fire incident. The RAP will assess the extent of damage from the Repetitive Fire to the vegetation communities and the Covered Species, including ancillary damage to the Preserve due to emergency response activities.

The RAP will be completed within 60 days of the activation of the HEAT. If the RAP demonstrates that the damage to the Preserve is of regional concern, the City will seek the participation of other Participating Local Jurisdictions to assist with developing implementation of the RAP. One or more of the

following management activities will be incorporated into the RAP implementation program, as appropriate to the circumstance:

- (i) Controlling non-native weeds and other invasive species through approved techniques; and/or
- (ii) Reseeding with a native seed mix; and/or
- (iii) Implementation of erosion control measures consistent with habitat values in the Preserve.

## **5.8.2 Flood**

For the purpose of defining Changed Circumstance, Flood is defined as flood events occurring within Preserve floodplains associated with the Otay River Valley and Salt Creek, at greater than 50-year and up to and including 100-year levels, as classified by Federal Emergency Management Agency (FEMA) and determined by the Chula Vista Department of Public Works.

### **5.8.2.1 Risk Assessment**

FEMA provides local jurisdictions with mapping that defines the areas that may be affected, or inundated, by flood. A 100-year flood, as defined by FEMA, produces a magnitude of inundation that has a one percent chance of occurring in any given year. The 100-year flood has a 39% chance of occurring in any given 50-year period, and thus is reasonably foreseeable during the life of the permit. However, flooding is a natural event and is not anticipated to cause damage sufficiently severe to prevent natural regeneration of existing habitats within the Preserve.

Figure 5-5 identifies the 100 year flood zones located within the Preserve. These areas primarily follow the Otay River Valley and Salt Creek Canyon, in the Otay Ranch PMA, and are essentially confined to natural drainage channels and riparian areas, where water has historically been known to occur. Both the Salt Creek and Otay River Valley Preserve areas are substantially broader than the width of a 100 year flood zone, which would allow these areas to accommodate natural storm flows from events even less frequent (more severe) than a 100-year flood.

City land use policies accommodate floods up to and including a magnitude of 100-year, and require that drainage facilities manage flows into tributary streams to approximate natural flows. This enables floodplains to function in their natural capacity, permitting unobstructed flows through natural riparian courses during flood events.

### **5.8.2.2 Preventative Measures**

Preventative measures to reduce the likelihood of or harm from flooding in the Preserve are included in the adaptive management provisions as specified in Section 7.0 of this Subarea Plan, and in the Otay Ranch RMP 2. City land use

policy's ensure that land use regulations and public improvements accommodate flood events that approximate the rate, magnitude and duration of natural flood flows.

All development projects approved by the City will also include implementation of Best Management Practices for stormwater and surface runoff pursuant to the standards promulgated by the California Regional Water Quality Control Board (RWQCB). For all discretionary projects approved by the City, the City will include mitigation measures or other conditions, as appropriate, to reduce the likelihood that a flood would adversely impact Covered Species and the Preserve. As a co-permittee of the RWQCB National Pollution Discharge Elimination System (NPDES) Permit, the City is required to adopt a Standard Urban Storm Water Mitigation Plan (SUSMP). The large majority of new development projects and significant redevelopment projects must meet SUSMP requirements to reduce pollution and runoff flows. The City's SUSMP will include a list of recommended source control and structural treatment Best Management Practices (BMPs).

#### ***5.8.2.3 Planned Responses to Flood***

Upon the occurrence of Flood as defined by this Section, the City Habitat Manager will notify the Wildlife Agencies pursuant to the protocol established by the City's Emergency Management Plan described in Section 7.3.3 of this Subarea Plan. Within 30 days of the Flood incident, the City Habitat Manager will assess the damage caused by the Flood within the Salt Creek and/or Otay River Valley floodplains to determine, with concurrence of the Wildlife Agencies, if a monitoring program is required.

Should the extent and severity of the Flood damage indicate a need for monitoring, the City Habitat Manager will develop and implement a monitoring program for a period of up to two years, to monitor natural re-growth within the damaged area. The monitoring program will provide for site visits on a regular basis, as determined by the City Habitat Manager to be appropriate to the scope and severity of the Flood damage.

At any time during the monitoring program, should monitoring observations indicate that allowing habitat to re-grow without interference is resulting in increased opportunity for invasion by exotic species and/or increased potential for type conversion, as determined by the City Habitat Manager, the Preserve management program in effect at the time will be modified to reduce the potential for such invasion and/or type conversion. One or more of the following management activities will be incorporated into the modified management program, as appropriate for the circumstance:

- (i) Removal of sediment and/or debris; and/or
- (ii) Controlling non-native weeds and other invasive species through approved techniques.

### **5.8.3 Drought**

For the purpose of defining Changed Circumstance, Drought is defined as climatic drought up to three years in length, as declared by the California State Department of Water Resources and/or the San Diego County Water Authority (CWA).

#### ***5.8.3.1 Risk Assessment***

Drought is a cyclical weather phenomenon that is beyond human control. Drought is not uncommon in Southern California, and it is a phenomenon to which local natural habitats and species have of necessity adapted over time. Drought occurs slowly over a multi-year period, differing from the catastrophic events of fire and flood, which occur rapidly and afford little time for preparing for disaster response. Drought conditions may adversely affect the Covered Species and the conserved vegetation communities, if the species and/or habitats are unable to adapt to the changing conditions.

The potential for drought to impact the Preserve increases with the length of a drought. As Preserve species and habitats begin to react to a prolonged reduction in rainfall, carry-over supplies in reservoirs are depleted and water levels in groundwater basins also decline, making imported water resources less available for non-potable uses. Both San Diego County and the City rely heavily on imported water. However, according to the California Department of Water Resources (DWR), in their document “Droughts in California,” droughts exceeding three years are rare in Northern California, the area of California that is the source of much of the State’s developed water supply and of imported water for Southern California. A drought period of over three years in length which restricts availability of water for Preserve purposes is therefore not foreseeable, and would be considered an Unforeseen Circumstance.

#### ***5.8.3.2 Preventative Measures***

This Subarea Plan does not contain measures to prevent climatic drought because drought is not preventable by human intervention.

Eastern Chula Vista, where the majority of the Preserve is located, is served by the Otay Water District (OWD). OWD is a member of, and purchases imported water from, the San Diego CWA. In order to reduce reliance upon imported water, OWD has implemented a reclaimed water program. Reclaimed water distribution lines are in place or planned for construction throughout the City, including adjacent to the Preserve in the North City and Otay Ranch PMAs. Reclaimed water is used for non-potable water requirements such as landscape and park maintenance, and will be the primary source of water for Preserve maintenance, greatly reducing the risk of impact from drought on Preserve species and habitats.



To prepare for a potential diminished water supply, the City will assess its use of reclaimed water City-wide, and will reprioritize the use of reclaimed water to direct available reclaimed water to Preserve areas undergoing active restoration where water is needed, and where it is possible to do so. It is acknowledged that the City may not be able to lawfully control the availability of reclaimed water for active restoration areas in times of drought or diminished supply. However, to the extent that it is able, the City will work with responsible water agencies to reserve sufficient reclaimed water to sustain restoration areas in the Preserve.

#### ***5.8.3.3 Planned Responses to Drought***

Upon the occurrence of Drought as defined by this Section, the City Habitat Manager will notify the Wildlife Agencies pursuant to the protocol established by the City's Emergency Management Plan described in Section 7.3.3 of this Subarea Plan. Within 60 days of the onset of Drought, the City Habitat Manager will assess the condition of the Preserve to determine, with concurrence of the Wildlife Agencies, if a monitoring program is required for all or portions of the Preserve.

Based upon the extent and severity of the Drought, the City Habitat Manager will develop and implement a monitoring program to monitor natural re-growth within the damaged area for a period of up to two years. The monitoring program will provide for site visits on a regular basis, as determined by the City Habitat Manager to be appropriate to the drought situation.

At any time during the monitoring program, should monitoring observations indicate that allowing habitat to re-grow without interference is resulting in increased opportunity for invasion by exotic species and/or increased potential for type conversion, as determined by the City Habitat Manager in consultation with the Wildlife Agencies, the Preserve management program in effect at the time will be modified to reduce the potential for such invasion and/or type conversion. One or more of the following management activities will be incorporated into the modified management program, as appropriate for the circumstance:

- (i) Providing temporary irrigation to strategic areas of the Preserve; and/or
- (ii) Controlling non-native weeds and other invasive species through approved techniques.

#### **5.8.4 Invasion of Exotic Species**

For the purpose of defining Changed Circumstance, invasion of exotic species is defined as an increase of invasive species within the Preserve to the extent that, as determined by the City Habitat Manager in consultation with the Habitat Management Technical Committee (HMTTC), such increase is of sufficient magnitude to significantly, adversely

affect any Covered Species. For the purpose of implementing the actions specified by this Section, species to be considered potentially invasive are those included in Appendix N.

#### **5.8.4.1 Risk Assessment**

Although invasive, exotic, or pest species of plants and/or animals may currently be present within the Preserve, an unexpected and/or sudden increase in certain invasive species may create the potential for impacts to Covered Species which could have a significant adverse affect on one or more of the Covered Species within the Preserve. Opportunities for increases in invasive species could occur as urban development expands in areas surrounding the Preserve. The occurrence of a catastrophic event, including Changed Circumstances defined in Sections 5.8.1-5.8.3, may precipitate sudden increases of invasive species. Planned Responses to these Changed Circumstances, however, include measures to reduce the opportunity for invasion by exotic species.

#### **5.8.4.2 Preventative Measures**

Establishment of the Preserve and the management actions that will be undertaken as part of the implementation of this Subarea Plan will reduce the probability of sudden increases in invasive species. Sections 7.5.2 and 7.5.4 of this Subarea Plan and the Otay Ranch RMP discussed in Section 7.6 contain measures specifically designed to prevent invasive species from threatening the Preserve. These measures include restrictions on the use of invasive plant species in landscape palettes, visitor/resident invasive species education, training and use of volunteers in removing invasive plant species, and cooperation with the Department of Agriculture and University specialists in developing programs to limit invasive ants. Through implementation of the Framework Management Plans and ASMDs associated with this Subarea Plan, invasive species will, under normal circumstances, be discovered prior to becoming a threat to Covered Species. When invasive species are discovered, the Preserve management program is designed to be tailored to reduce and/or eliminate such species.

#### **5.8.4.3 Planned Responses**

If, as determined by the City Habitat Manager in consultation with the HMTC, an increase in invasive species has occurred within the Preserve at a magnitude sufficient to present a significant adverse affect to any Covered Species, the City Habitat Manager will notify the Wildlife Agencies pursuant to the protocol established by the City's Emergency Management Plan described in Section 7.3.3 of this Subarea Plan. If the influx of invasive species involves a species included on the CalEPPC "List A" or the NBII list (Appendix N), within 30 days of such notice to the Wildlife Agencies the City Habitat Manager will assess and implement changes to the adaptive management program in effect at that time, that may be necessary to control the invasive species. If the influx of invasive species involves a species listed on the CalEPPC "Red Alert" list (Appendix N),

the City Habitat Manager will also notify other relevant agencies as recommended by CalEPPC. Within 30 days of obtaining responses from the agencies contacted, the recommendations of the agencies will be used by the City with concurrence of the Wildlife Agencies to determine appropriate modifications to be made to the adaptive management program in effect at that time.

Modification of the adaptive management program to address an invasive species Changed Circumstance will include implementation of a monitoring program of up to two years, as determined by the City Habitat Manager. The monitoring program will provide for site visits on a regular basis, as determined by the City Habitat Manager to be appropriate to the type, scope and location of the exotic species infestation.

#### **5.8.5 Future Listings of Non-Covered Species**

The City recognizes, as noted in the USFWS discussion of its “Habitat Conservation Plan Assurances (‘No Surprises’) Rule”, (63 F.R. 8859; February 23, 1998), that the future listing of a species whose conservation was not provided for in the MSCP to a level sufficient to include the species as a Chula Vista Covered Species or Species Adequately Conserved can be viewed as a Changed Circumstance. In the event that a species which is not a Covered Species pursuant to this Plan and associated Take Authority is listed by USFWS subsequent to the issuance of Take Authority pursuant to this Subarea Plan, such listing will be considered a Changed Circumstance.

In the event of a listing of a non-covered species, the City and Wildlife Agencies will jointly identify measures that the City will follow to avoid take, jeopardy and/or adverse modification of any designated Critical Habitat within the Subarea, until and unless the City’s permit is amended to include coverage for the newly-listed species as a Chula Vista Covered Species or Species Adequately Conserved or the Wildlife Agencies notify the City that such measures are no longer required to avoid jeopardy, take or adverse modification of designated Critical Habitat of the newly listed species. Among other measures, the City will not issue any permit for land development, clearing and/or grubbing, except pursuant to the Chula Vista Excavation, Grading and Fills Ordinance (detailed in Section 5.2.1 of this Subarea Plan), which ordinance will require that prior to the City’s issuance of any permit for land development, clearing and/or grubbing, applicants must obtain Take Authority for any listed, non-covered species through appropriate federal and/or state permit processes.

#### **5.8.6 Changed Circumstances Not Provided for in the Subarea Plan**

Pursuant to the “No Surprises” rule at 50 C.F.R. 17.22(b)(5)(ii), the USFWS may not require (1) any conservation or mitigation measures in addition to those provided for under Sections 5.8.1 – 5.8.4 in response to a Changed Circumstance; or (2) additional conservation or mitigation measures for any Changed Circumstance that is not identified in Sections 5.8.1 – 5.8.4 without the consent of the City, provided the City is properly implementing the Subarea Plan.

As recognized in the “No Surprises” rule at 50 C.F.R 17.22(b)(6) and 17.32(b)(6), the USFWS, any Federal, State or local agency, or a private entity may take additional actions at their own expense to protect or conserve a species covered under the Subarea Plan.

## **5.9 Critical Habitat**

Critical habitat designations for at least three species covered by this Subarea Plan are or will be in place at the time of issuance of Take Authorization to Chula Vista. It is possible that the USFWS may designate critical habitat within the *Chula Vista Subarea* for other Covered Species throughout the life of the Subarea Plan.

In approving the Subarea Plan, the USFWS intends to issue a Biological Opinion which will, among other things, make findings addressing existing critical habitat designations for Covered Species. Where critical habitat has been finally designated for Covered Species at the time the City applies for Take Authorization, the USFWS will include in the Biological Opinion for this Subarea Plan findings of whether the activities permitted under the Section 10(a)(1)(B) permit will result in the destruction or adverse modification of the critical habitat, as defined at 50 C.F.R. Section 402.02.

The Chula Vista Subarea Plan:

1. Permits development in nonessential areas for each of the Covered Species,
2. Establishes a hard-line Preserve including key linkages and wildlife corridors,
3. Employs long-term conservation and restoration strategies with special management considerations for the protection of each of the Covered Species, and
4. Employs added protections for Narrow Endemic Species and Wetlands.

Because of these factors, it is anticipated that no additional special management considerations or protection will be necessary for the coastal California gnatcatcher, the QCB, or the Otay tarplant, as a result of either the implementation of the Subarea Plan or any future federally permitted Covered Activity within the areas designated as critical habitat for those species.